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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/622,562

07/18/2003

Peter Ho

01-12 RCE

4794

30031 7590 12/28/2007  
MICHAEL W. HAAS  
RESPIRONICS, INC.  
1010 MURRY RIDGE LANE  
MURRYSVILLE, PA 15668

EXAMINER

PATEL, NIHIR B

ART UNIT

PAPER NUMBER

3772

MAIL DATE

DELIVERY MODE

12/28/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/622,562

Applicant(s)

HO, PETER

Examiner

Nihir Patel

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 9.20.2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-11, 13-23, 25-31 and 33-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-23, 25-31 and 33-41 is/are allowed.
- 6) ☒ Claim(s) 2-6, 9 and 10 is/are rejected.
- 7) ☒ Claim(s) 7, 8 and 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed on September 20<sup>th</sup>, 2007 have been fully considered but they are not persuasive. The applicant states that Lomas fails to teach a front joining piece, a rear joining piece and/or contoured panels extending from a rear joining piece to a front joining piece. As stated in the previous office action the examiner still believes that the Lomas reference still teaches a rear joining piece **26 and 27 (see figures 5 and 6)** and a front joining piece (**the upper part of panels 9 and 10**).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., crescent shaped halves) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Even if the applicant refers the contoured panels as the crescent shaped halves, The Lomas reference does teach crescent shaped halves (**see figure 5**).

Finally the applicant also states that Lomas teaches away from using an elastomeric material. The examiner disagrees. The Lomas reference clearly states that "The hood is **preferably** made from non-elastomeric fabric". The phrase "preferably" implies that can be made of elastomeric material does not have to be from non-elastomeric material indicating that it would have been obvious to one having ordinary skill in the art to modify Lomas's invention by providing a headpiece being formed of an elastomeric material.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims **2-6 and 9** are rejected under 35 U.S.C. 102(b) as being anticipated by Lomas (US 5,542,128).

4. **As to claim 2**, Lomas teaches a headwear for supporting a breathing apparatus that comprises a headpiece **8 (see figure 2)**; and a connecting strap **14, 19 and 20** attached to the headpiece and adapted for releasably connecting the headgear to the patient interface device (**see figure 2**); wherein the headpiece comprises contoured panels **9 and 10 (see figure 5)**, each panel including an upper edge (**the interior part of reference characters 9 and 10**) having a length and a lower edge (**the exterior part of reference characters 9 and 10**) having a length, the length of the upper edge is shorter than the length of the lower edge (**see figure 5**); a rear joining piece **26 and 27 (see figures 5 and 6)** positionable along a rear portion of a patient's head; and a front joining piece (**the upper part of panels 9 and 10**) positionable along a front portion of such a patient's head, wherein each of the contoured panels extend from the rear joining piece to the front joining piece (**see figure 2**).

5. **As to claim 3**, Lomas teaches an apparatus wherein the connecting strap is an upper connecting strap attached to the front joining piece and adapted to releasably connect the headgear to the patient interface device (**see figure 2**).

6. **As to claim 4**, Lomas teaches an apparatus that further comprises a lower connecting strap attached to the rear-joining piece and adapted to releasably connect the headgear to the patient interface device (see figures 2 and 6).
7. **As to claim 5**, Lomas teaches an apparatus wherein the upper and the lower connecting straps include hook and loop components for adjustably connecting the headgear to the patient interface device (see figures 2, 5 and 6).
8. **As to claim 6**, Lomas teaches an apparatus wherein the upper and lower connecting straps include a loop fastener portion on the exterior thereof and an end portion having a hook tab portion, wherein each hook tab portion is adapted for threading through a connecting element of the patient interface device and securing to the loop fastener portion (see figure 2, 5 and 6).
9. **As to claim 9**, Lomas teaches an apparatus wherein each of the contoured panels has an arch-shape having an upper edge having a concave curvature and a lower edge having a concave curvature and a lower edge having a convex curvature (see figure 3).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claim **10** is rejected under 35 U.S.C. 103(a) as being unpatentable over Lomas (US 5,542,128).

13. **As to claim 10**, Lomas substantially discloses the claimed invention; see rejection of claim 2 above, but does not disclose a headpiece being formed from an elastomeric material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Lomas's invention by providing a headpiece being formed from an elastomeric material in order to make it easier for the user to use, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 146.

***Allowable Subject Matter***

14. Claims **13-23, 25-31 and 33-41** are allowed. The prior art does not teach a crossover strap extending from one of the first or the second contoured panel to a remaining other one of the first or the second contoured panel.

15. Claims **7, 8 and 11** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach a crossover strap extending from one of the contoured panels to another contoured panels and a stabilizer attached to the headpiece and adapted to stabilize a conduit connected to the patient interface device.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

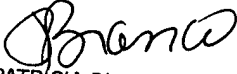
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Art Unit 3772

  
Nihir Patel

  
PATRICIA BIANCO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700  
12/21/07